I.D. No. 41 of 1972

I Party —

Workmen represented by The President, Chemical Employees Association, No. 6, Andhra-Davanga Building, Bangalore-9,

Vs.

II Party.—

The Management of Mysore Chemical Manufacturers Ltd., Chickbanavar, Bangalore District.

APPEARANCES

For the I Party.—

Sri K P. Sachindranath, President, Chemical Employees' Association, Bangalore.

For the II Party.—

Sri K. R Ramaswamy Iyengar, Assistant Secretary, Mysore State Employers' Association, Bangalore-4.

REFERENCE.

(Government Order No. FCL 1273 LLD 72, dated 20th November 1972)

AWARD.

In exercise of the powers conferred under section 10 (1)(d) of the Industrial Disputes Act, 1947, the State Government has issued Government Order No. FCL 1273 LLD 72, dated 20th November 1972 referring the following points of dispune for adjudication by this Tribunal :

"(1) Are the workmen of Mysore Chemical Manufactures Limited, Tambanahalli, Chickbanavar, Bangalore North, Bangalore Districts, justified in demanding classification and scales of pay including D.A under Group I Factories as per recommendations of Central Wage Board for Heavy Chemicals and Fertilizer Industries with effect from 1-4-1968 ?

(2) If not, to what other relief they are entitled ?"

2 The First Party states as follows :—The II Party Company started about 30 years ago with a meagre Paid-up Capital of Rs. 3 lakhs for manufacturing copper sulphate, sulphate of Alumina, etc., has been making enormous profits and declaring dividends from 5% to 30% every year taking full advantage of the Government of India's policy restricting imports to conserve foreign exchange and at the same time, to encourage local manufactures to produce various types of heavy chemicals required for commercial use in the country. The II Party Company being a pioneer in the Karnataka State has been catering to the growing needs, particularly of coffee growers. But the II Party has been adopting third degree methods to diprive

workers of their legitimate rights to enjoy benefits arising out on recommendations of the Central Wage Board for Heavy Chemicals and Fertilisers Industries. Though the recommendations were accepted, the II Party has partially implemented the same in the month of July 1969. The II Party drew up a settlement and obtained the signatures of the workers on the same on 20th August 1969. The members of the Staff refused to accept the payments mentioned in the alleged settlement. But a few workers, who were assured of proper classifications and substantial payment, commensurate with their service and output, attested. The II Party has obtained the signatures of the workers, most of whom are illiterate, by misrepresenting facts. Appointment letters were issued to the workers stating that they are provided with free quarters, electricity, water, etc. The quarters provided to the workers are not constructed as per the Housing Board's specifications. As per the alleged settlement, the II Party started deducting house rent, electricity charges, etc., from the total wages paid, reducing the basic wages and enhancing the rate of D.A. with the result, the workers lost considerable portion of their basic wages. The provisions of Section 9-A of the Industrial Disputes Act were not complied with while effecting deduction in basic wages. Thus, there is no valid and effective termination of conditions laid down in the appointment letters. When the workers protested against deduction of house rent, etc., and requested restoration of basic wages, the II party refused to restore basic wages and even threatened the workers with dire consequence. Without any provocation, the II party declared lock-out on 18th February 1970. The lock-out was lifted on 27th February 1970 due to the intervention by some members of the Local Bodies. Since the II party failed to restore the illegal deduction in wages, the I party submitted a demand on 10th August 1970 demanding that all workers should be given the scales recommended by the Central Wage Board for Class-I factory with effect from 1st April 1968 and the workers should be classified in consultation with the Association. The II party has only orally agreed to implement the recommendations for Class-I factory with retrospective effect as and when the position improves. But the II Party complied with the criteria laid down by the Central Wage Board for Class I factory and is bound to implement the recommendations of the Wage Board both in regard to wage structure and classification. The I party also filed an Annexure showing how the introduction of the wage scales and classification of the workers is to be done.

3. The II Party filed Objection Statement raising the following contentions :—

(i) The Central Wage Board recommendation divided into two groups heavy Chemicals and Fertiliser for implementation of its recommendations. The II Party falls under Group II being a technologically handicapped factory and a small unit, where the

existing level of minimum total wage paid to an unskilled worker is less than Rs. 100. The II Party has accordingly revised, to the extent possible, the pay scales, etc., as recommended and made applicable to Group II factories. The I party is not entitled for implementation of the recommendations as applicable to Group I Factories. After the Wage Board's recommendations were implemented by the II Party, the employees were fitted into grades, after classification of workers into grades, taking into consideration the qualification, experience, etc., Weightage in the shape of advance increments have also been given. While adopting the scales recommended by the Wage Board, the total remuneration was split up as per Wage Board's recommendations into basic wage or salary and D. A. As a consequence thereof, the basic salary got reduced and the D A. increased considerably. But the total pay packet was much more than what they were getting earlier. The reduction in the basic wages is the result of the Wage Board's recommendations being implemented. The workers have accepted all the arrears and benefits under the implementation and the present demand raised after so many years, is malafide. The I Party's proposal found in the Annexure to its claim Statement is erroneous in several respects. The I Party is not entitled to any relief.

4. The I Party filed its Rejoinder.

5. In addition to the points of dispute schedule in the order of Reference, the following issues as arising out of the pleadings have been framed :—

"1. Do I party-workmen prove that the II party-Factory falls under Group-I Factory ?

"2. Do they further prove that the II Party-Management orally agreed to implement the recommendation of the Wage Board applicable to Class-I Factory with retrospective effect as and when their financial position improves ?

3. Do they further prove that the financial position of the II Party is sound to implement the recommendation of the Wage Board as applicable to Class-I Factory ?

4. Do they prove that they are entitled to classification of workers as per the Annexure to their statement and also for the introdution of wage scales recommended by the Central Wage Board for Class-I Factory with effect from 1st April 1968 ?

OR

Does II Party-Management prove that their Factory falls under Group-II Factory, that they have implemented the recommendation of the Wage Board applicable to Group-II Factories after negotiations with the Bangalore Chemical

Workers Union under the leadership of Sri U. S. Venkataraman?

5. Does the Management further prove that the employees having accepted all the arrears and the benefits under the said implementation cannot put forward the present claim and that their claim is malafied ?

6. Does the II Party-Management further prove that the claim of the I Party is unfounded, untenable and is barred by the settlement already entered into ?

7. Do I Party-workmen prove that Messrs. Ranga, Basava and Nazir mentioned in the Annexure are even now under the employment of the II Party ?

8. To what reliefs, if any, are the parties entitled?

9. What Awards?"

6. *Issue No. 1*—This is how the Central Wage Board for the Heavy Chemicals and Fertilizers Industries has grouped Heavy Chemicals and Fertilizer factories for purposes of implementation of its recommendations ip Chapter VII of its Report (1968). The Wage Board has divided such factories into two groups and has proceeded to state as follows—

"..... Group I comprises of Heavy Chemiclas and Fertilizer units other than

(1) technologically handicapped factories manufacturing only single super-phosphate or calcium carbide and do not form part of mixed companies, and

(2) small units where the existing level of the minimum total wage payable to an unskilled worker is less than Rs. 100 on the date of implementation of the Report.

Factories enumerated as (1) and (2) will fall under Group II"—(See page 124).

7. The first question to be decided is whether the II Party falls in one or the other group of factories with reference to the conditions that are required to be fulfilled.

8. It is urged by the II Party that condition No. 1 extracted above is fulfilled for the machinery used by the II Party is all old, *i.e.*, not the new or the sophisticated type, and that the II Party manufactures only a single chemical and is not a Part of a mixed companies.

9. As regards the machinery used by the II Party, it is urged by the I Party's counsel that as per the Balance Sheets at Ext. M-7, ever since 1938, depreciation is being given every year for the value of the machinery bringing its present value down to "nil" and that, therefore, there is every reason to believe that new machinery must

have been installed and that in any way, the II Party has sufficient surplus profits for purchase of new machinery.

This submission on the part of the I Party may not be of much avail when it is not shown that actually such new and sophisticated machinery has been installed. But there is no evidence on behalf of the II Party that the machinery installed was itself not the latest and the best available at the time of its installation and that over the years, new and sophisticated machineries have been offered for sale by manufacturers. At any rate besides owning its own Coffee Estates, for which its own fertilizers are being used, the II Party is owning an Alum Manufacturing Pant at Pelagula. The II Party, therefore, forms part of Mixed Company. This fact was not seriously disputed by the II Party's counsel. When this is so, the question as to whether the machinery is old as contended by the II Party would pale into insignificance and becomes irrelevant for all the condition mentioned in Clause (1) extracted above are required to be fulfilled, before a factory pass into Group II.

10. Even as regards Clause (2) extracted above, there is no dispute that the minimum total wage payable to an unskilled worker by the II Party comes to more than Rs. 100, if the Interim Relief given as per the Wage Board's recommendations at Rs. 12-50p per month were to be added. There is no substance in the submission of the II Party's counsel that the Interim Relief amounts should not be added. Para 5.60 of the Wage Board's recommendations says that "the existing wage shall be deemed to be the total of the existing basic pay and dearness allowance of the consolidated wage as on the date of implementation and the Interim Relief or payment, if any, paid or payable on the recommendations of the Wage Board." I, therefore, hold that the II Party falls under Group I Factory according to the Wage Board's specifications.

11. It is urged by the II Party on the strength of Ext. W-9 letter dated 15th January 1968 of the Government of India, Directorate General of Technical Development, Acids & Fertilisers Directorate, saying that—

> "..... consequent on the revision of the definition of small scale industries whereby industrial units with a capital investment upto Rs. 7.5 lakhs in terms of plant and machinery (excluding land and buildings) are termed as small scale units, it has been decided by the Government in the Ministry of Industrial Development and Company Affairs (Department of Industrial Development) that all such units coming within the scope of the revised defination should in future be looked after by the respective State Director of Industries.

In view of the above decision, your industrial undertaking, under the name and style of M/s Mysore Chemical Manufactures Ltd.,

Bangalore for the manufacture of Acids, Alum and Copper Sulphate etc., is hereby transferred to the care of the Director of Industries, Bangalore....."
The II Party has to be treated as a Group II Factory.

12 Ext. W 9 letter of the Government of India has hardly any bearing. The assignment thereunder to the State Director of Industries is only for the purpose making available the necessary raw and material and power for the running of the II Party's Factory. Ext. W-9 letter of the Director of Industries cannot have the effect of modifying the Wage Board's specifications in clauses (1) and (2) extracted above. It is also to be borne in mind that II Party is not one of the industries named in Annexure VIII of the Wage Board's Report as excluded from the purview of the Wage Board. It cannot be urged by the II Party's counsel that the II Party was not mentioned in the list at Annexure VIII of the Wage Board's Report due to an oversight. I, therefore find under Issue No. 1 that the II Party falls under Group I Factory.

13. Issues Nos. 2 to 6:—The controversies which are covered by these issues are the several facets of one and the same contention, namely, whether the II Party having implemented in Ext. M-3 Agreement dated 20th August 1970, The Wage Board's recomendations on the basis that the II Party falls under Group II Factory, the II Party is not entitled to raise any contentions to the contra. This submission on the par of the II Party is not sustainable since Ext. M-3 is not a Settlement which fulfills the several conditions prescribed in Rule 59 and in particular, sub-rule (3) thereof, of the Rules framed under the Industrial Disputes Act.

14. The II Party, is also not entitled to contend that the State Government not having referred the validity of Ext. M-3 Agreement for adjudication by this Tribunal, this Tribunal is not entitled to go into the said question. When the II Party relies upon Ext. M-3 Agreement as a bar, it is the duty of the II Party to show that Ext. M-3 Agreement is in accordance with law. Otherwise, the II Party will also be faced with the difficulty that it cannot press Ext. M-3 Agreement into service because the State Goverement has not referred to the same while setting out the points of dispute for adjudication.

15. The other submissions of the II Party regarding its financial position is also untenable for the Balance Sheet for the years ending 31st March 1971 (at page 20) shows that except during the year 1945-46, for all the remaining years till 1970-71: the II Party has been making big prouts and paying dividends ranging from 10% to 30% The II Party, therefore, cannot contend that it is not financially able to implement the Wage Board's recommendations as applicable to a group I Factory. These issues are held in favour of the I Party.

16. Issue No. 7 :—No submissions having been made regarding the dispute covered by this issue, no finding need be given thereon.

17. Issue No 8 :—It follows from the preceding issues that the reliefs on the basis that the II Party is a Group I Factory are to be granted.

18. Issue No 9 :—An Award is passed accordingly.

(Dictated to the Stenographer, transcribed by him and corrected by me).

F. L. F. ALVARES,

Presiding Officer,
Industrial Tribunal,
Bangalore.

&

ORDER No. SWL 35 LLA 78

Bangalore, dated 16/22nd February 1978.

Whereas by State Government Order No FCL 1273 LLD 72, dated 20th November 1972, the industrial dispute between the workmen and the management of Mysore Chemical Manufacturers Ltd., Chickbanavar, Bangalore District was referred to the Industrial Tribunal Bangalore for adjudication.

And whereas the Presiding Officer, Industrial Tribunal, Bangalore has submitted to the State Government its award in respect of the said industrial dispute.

Now, therefore, in exercise of the powers conferred by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Karnataka are pleased to direct the publication of the said award as above in the *Karnataka Gazette*.

By Order and in the name of the President of India,

B. MANAMOHAN,

Under Secretary to Government,
S. W. and Labour Department.

2641—S. O. 682

GOVERNMENT OF KARNATAKA

SOCIAL WELFARE AND LABOUR DEPARTMENT

Labour Dispute :—Industrial dispute between the workmen and the management of Karnataka State Road Transport Corporation, Bangalore Division, Bangalore-27.

Award of the Presiding Officer, Labour Court, Bangalore published.